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SUBJECT: EU REFORM TREATY: MAKING THE SAUSAGE

REF: BRUSSELS 02001

1. (SBU) Summary. On July 23, EU Foreign Ministers opened an Intergovernmental Conference (IGC) to draw up the EU's "Reform Treaty." The Portuguese Presidency wants to draft the treaty quickly on the basis of the mandate adopted by the leaders at the June 21-23 European Council. In fact, the Presidency aims to conclude the IGC before the end of 2007, in order to have Member States ratify the new treaty before the June 2009 European Parliament elections. The IGC mandate maintains many provisions of the abandoned 2004 draft Constitutional Treaty but with amendments designed to ensure smooth ratification. The level of detail in the political framework agreed at the June European Council should make the IGC more of a technical than a political exercise. However, there could still be some snags in IGC discussions and certainly in the subsequent national ratification processes. This cable describes the IGC process and reviews where the European Council agreement came out on issues relevant to U.S. interests and the conduct of U.S. diplomacy toward the EU (reftel). END SUMMARY.

WHAT TO EXPECT FROM THE IGC  
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2. (SBU) The task of the Intergovernmental Conference is to translate the political agreement reached by EU leaders at the June 21-23 European Council into legal form. The end product will be a "Reform Treaty" amending the existing EU treaties. Don't expect much drama from this exercise: because the June Council locked in virtually all of the key political decisions, much of the IGC will be the realm of lawyers and translators. (Indeed the lawyers are already reviewing a first draft over the EU's August recess.) If all goes according to plan, the text will then be scrubbed by EU Foreign Ministers at their informal (Gymnich) meeting September 8-9, and a final version presented to the heads of state for discussion at their Council meeting October 18-19. Formal signing will then take place at the December Council meeting. In short, the plan is for a fast, tight, and low-key IGC process.

What Could Go Wrong?  
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3. (SBU) The biggest worry for the Portuguese is that the Poles will try to re-open the discussion on the voting system. The IGC mandate includes a mechanism allowing Member States falling slightly short of constituting a blocking minority to request the Council continue negotiations on the proposal they dislike and address their concern "within a reasonable delay" (a formula EU officials say should not exceed four months). Soon after the June Council agreement,

the Poles indicated that they had been misled into believing they would be allowed a two-year delay of Council decisions under this mechanism. However, the Poles have received no sympathy for this argument from other Member States or the Commission, and at the most recent GAERC, the Polish foreign minister was more conciliatory. With other Member States fearing a spill-over effect if this issue is re-visited, there will be big pressure on the Poles to drop their case.

#### The Real Drama: Ratification

14. (SBU) The miracle of the German presidency-led treaty development process was to transform the bulk of the abandoned Constitutional treaty into a legalistic series of treaty amendments that Member States could either sell to their publics as technical improvements or simply sneak right past them with no public discussion at all. Will it work? Certainly for most of the Member States - even France is expected to act with little public fuss. At this early stage, the nail-biters look like the Netherlands, the UK, and Ireland - the latter being only Member State required to hold a referendum. In any case, Member State governments will have little margin to delay, as the EU's goal is to have full ratification in place by 2009, when a new European Parliament will be elected and a new Commission chosen.

#### And What Does It All Mean?

15. (SBU) The balance of this message will outline in detail how the Reform Treaty will change the EU. The details are important, because the EU's power and influence have typically expanded the most as a result of relatively obscure changes, little noted at the time. For those of you with

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time only for the CliffsNotes version, however, here is what you should ponder:

- The consolidation of Council and Commission foreign relations authorities will greatly increase the influence and reach of the new High Rep.

Our Council secretariat contacts are already salivating at the prospect of their boss controlling the policy apparatus in the Council secretariat, chairing the foreign policy councils (both the GAERC and the PSC), serving as Commission Vice President, managing the Commission's external assistance budget, and heading the "diplomatic corps." Together these tools will give the High Rep a powerful capacity to not only set the foreign policy agenda, but interpret and implement Council decisions in a manner of his own choosing. Yet, he will still have to win unanimous 27 support for formal Council decisions on CFSP issues. How this relationship plays out in practice will likely depend on personalities, but it seems certain that the new High Rep position will grab even more influence away from Member State foreign ministers.

- New powers mean that Justice and Home Affairs (JHA) will remain a major avenue for further EU integration over the next decade.

There is little more to do in terms of integrating Member State markets and services - instead, the next frontier is JHA. The Reform Treaty will set the stage, though the process will inevitably be slow and acrimonious. While Member States will retain primary jurisdiction over enforcement of criminal laws, the European Union will play an increasingly important role in setting overall guidelines and policies for police and judicial cooperation. Unlike under current procedures, the Reform Treaty will allow for "enhanced" cooperation to occur, even if Member States do not agree unanimously on such mechanisms. The new process will remain somewhat cumbersome, though.

- The new voting rules - much ado about little?

Although one of the most talked-about changes of the reform treaty is the new Council voting system, Perm Rep contacts here don't think this will change much in practice. In their view, the Council will continue to strive for consensus (or at least large majorities) in most of its decision-making.

#### The Mechanics

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¶6. (U) The Reform Treaty will not replace the existing EU treaties, which remain in force. However, it will do three important things:

- amend existing treaties
- carry forward many of the innovations of the defunct Constitutional treaty
- add some new innovations of its own, concerning the competencies of the EU and the Member States, the nature of CFSP, the enhanced role of national parliaments, the treatment of the EU Charter of Fundamental Rights, and a mechanism in the area of police and judicial cooperation enabling some Member States to go forward on a given act, while allowing others not to participate.

#### THE MANDATE FOR THE REFORM TREATY: A THUMBNAIL SKETCH

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¶7. (SBU) Following is a more thorough score sheet of where the EU came out on decisions at the June European Council and what may still raise its head in the coming months during the IGC.

#### ¶8. (SBU) Issue: Voting

Outcome: EU leaders agreed to a "double majority" voting system (55% of member states plus 65% of the EU's total population). This applies mainly to economic legislation. A number of concessions were required to obtain Warsaw's support for this agreement, as the current voting system gives Poland a larger voting share than the new one. Accordingly, leaders agreed that the entry into force of the "double majority" will be delayed until November 1, 2014. Secondly, until March 31, 2017, any Member State may request that a given decision be taken on the basis of the current system (which favors Poland). Furthermore, the IGC mandate includes a mechanism allowing Member States falling short of constituting a blocking minority to request the Council

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continue negotiations on a proposal they dislike and address their concern "within a reasonable delay" (a formula EU officials say should not exceed four months). Polish PM Kaczynski claimed shortly after the June 23 agreement on the IGC mandate that Poland got a verbal agreement at the European Council allowing a two year-delay of Council decisions under this mechanism, which he wants put in writing during the IGC. FM Fotyga at the IGC reportedly did not reiterate Kaczynski's demand but alluded to the importance of respecting "the will of Member States (in the minority)," a notion that could lead to endless negotiations, as noted by several observers in the corridors of the IGC. The Portuguese Presidency and other Member States will do their best to prevent the Poles from reopening this discussion.

#### ¶9. (SBU) Issue: EU Charter of Fundamental Rights

Outcome: The Reform Treaty will cross-reference the EU Charter of Fundamental Rights rather than including the Charter as part of the Treaty itself (as was envisaged under the abandoned Constitutional Treaty). The Charter is a catalogue of individual rights and freedoms. The idea of the cross-reference is to give the Charter, which was until now solely a political declaration, a binding character without

having it part of the treaty itself. However, the UK secured an opt-out from the Charter, and the IGC mandate specifies that two other countries -- reportedly Ireland and Poland -- reserved the right to opt out as well, taking the wind out of the sails of those advocates of a universal set of "European rights."

¶10. (SBU) Issue: Justice and Home Affairs Decision-Making

Outcome: The Reform Treaty will eliminate the EU's current "three pillar" legislative structure and extend the scope of voting to more than 40 new areas. Arguably, the most important of these areas is Justice and Home Affairs (JHA), including issues of cross-border crime and police cooperation. (Note: Despite the expansion of voting into key policy areas, decisions about Common Foreign and Security Policy (CFSP), defense, taxation, and social security issues will still require consensus.)

The Reform Treaty will allow Member States to develop EU-wide legislation applicable to JHA issues without the need for unanimity. Under the new treaty, Member States would prepare draft directives for enhanced cooperation and attempt to reach EU-wide consensus within the Council. Failing such consensus, if at least one third of the Member States agree to the draft directive for enhanced cooperation, they may refer the proposal to a European Council meeting (heads of state) for discussion. If the European Council reaches unanimous agreement within four months, it will refer the proposal back to the Council for adoption.

If consensus is not reached within the European Council, and at least one third of the Member States still want to proceed with the draft proposal, they may inform the Parliament, Commission, and Council of their decision to proceed with the proposal for enhanced cooperation. Member States that disagree with the proposal can then "opt-out" of the ultimate decision. The "opt-out" provision was engineered primarily for the UK and Ireland, which have different legal systems than those of most Member States.

Issue: EU "Foreign Minister"

¶11. (SBU) Outcome: The Reform Treaty will establish the new position of "High Representative of the Union for Foreign Affairs and Security Policy." The term "Foreign Minister" was dropped due to objections from the UK and some other Member States. The position incorporates the following elements:

- Merges the current functions of the EU High Rep for CFSP (now Solana) and the Commissioner for External Relations (now Ferrero-Waldner);
- Manages the Commission's external relations budget as well as off-budget resources;
- Chairs the monthly meetings of Member States' Foreign Ministers (External Relations sessions of the GAERC);
- Oversees the newly-created EU diplomatic corps, officially named the "European External Action Service" (EEAS) and composed of officials from the Council Secretariat, the Commission, and seconded officials from the diplomatic services of individual Member States. The EEAS will now provide political reporting to the Council.

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¶12. (SBU) Issue: Permanent President of the European Council

Outcome: In a change from the current six-month rotation of Member State presidencies, the Reform Treaty will establish a new position of permanent President of the European Council, elected by EU leaders for a two-and-a-half year term, renewable once. This is designed to make EU policy more consistent and give the EU more visibility on the world stage. The new President will not entirely replace the rotating six-month Presidency of the Council, which will be retained for some Council formations such as meetings of JHA

and environment ministers.

#### ¶13. (SBU) Issue: Reducing the Number of Commissioners

Outcome: The size of the Commission will shrink, but not until 2014. There will no longer be one Commissioner per Member State. Instead, the number of Commissioners will correspond to two thirds the number of Member States. Those Commissioners will be selected on the basis of a rotation system that remains to be worked out among Member States, but will take into account demographics and geography.

#### ¶14. (SBU) Issue: European Parliament

Outcome: MEPs will enjoy more power in more policy areas, where they will have joint decision-making authority (extension of "co-decision") with the Council. This will be a major selling point for those packaging the reforms as a way to make the EU more democratic. The Treaty caps the number of Members of the European Parliament (MEPs) at 750 - down from its current 785. The number of MEPs per country will be based on population with a maximum of 96 and a minimum of six.

#### ¶15. (SBU) Issue: Giving National Parliaments a Voice in EU Decisions

Outcome: Although contacts claim the change is mainly symbolic, the Reform Treaty gives national parliaments a more formal role in legislation. In practice, the Commission already consults national parliaments on legislation. With the new treaty, under a mechanism of "subsidiarity," a simple majority of national parliaments will be able to challenge a draft piece of EU legislation if they view the Commission as exceeding its powers. The Commission will have to reexamine the draft, which it may decide to amend, withdraw, or maintain (in the case of the latter it will provide justification to the Council and European Parliament.)

#### ¶16. (SBU) Issue: The Future of the Common Foreign and Security Policy (CFSP)

Outcome: The UK invested much of its energy in the June European Council negotiations to ensure that the Reform Treaty does not erode national sovereignty over foreign and defense policy. As a result of their tough stance, the treaty will state that CFSP is "subject to specific procedures" and shall be "defined and implemented by the European Council and the Council acting unanimously." This emphasis on Council unanimity is viewed by some Member States as a means to limit the power of the new High Rep by maintaining institutional divisions on CFSP issues.

#### ¶17. (SBU) Issue: Single Legal Personality

Outcome: The treaty gives the EU a single legal personality, but legal services contacts stress the single legal personality does not change the balance of any competencies between institutions or with Member States. The Reform Treaty will underline that a single EU legal identity poses no threat to the UNSC seats of the UK and France. Currently, Member States still sign international economic agreements as the "European Community" and foreign policy or justice agreements as the "European Union." Under the new treaty, Member States will be allowed to sign future international treaties as simply "the EU" - making the European Union the legal successor of both the European Community and the present-day European Union.

(SBU) Issue: Symbols of the Constitutional Treaty (European flag, anthem, the word "Constitution")

Outcome: Member States abandoned the constitutional concept of the 2004 IGC, which would have repealed all existing treaties and replaced them with a single text called "Constitution." Consequently, the term "Constitution" will not be used anywhere in the Reform Treaty. Nor will the



treaty mention EU symbols such as the flag, the anthem, or the motto. Though mainly cosmetic (the flag, anthem and motto will continue to be used in practice), this was an important concession to Member States whose publics are concerned with the EU swallowing up national sovereignty.

¶18. (SBU) Issue: Humanitarian affairs and development policy

Outcome: The Reform Treaty introduces a legal basis for humanitarian affairs as an objective in itself. The provision will underline that humanitarian assistance is a specific policy goal of the EU and emphasize the application of the principles of international humanitarian law, in particular impartiality and non-discrimination. The Reform Treaty will also state clearly that the eradication of poverty is the primary objective of the EU's development cooperation policy. Policy towards middle income countries will be more complex and will likely include a mix of trade, economic, financial, technical, and cultural forms of cooperation.

¶19. (U) Issue: Environment and Energy

Outcome: The new treaty will state that one of the Union's objectives is to work for the sustainable development of Europe, based on a high level of protection and improvement of the quality of the environment. Although the idea of sustainable development is not absent from the current treaties, the Reform Treaty will reinforce and more clearly define this objective. Sustainable development is affirmed as one of the fundamental objectives of the Union in its relations with the rest of the world. The provisions on energy reflect decisions already taken by EU leaders in March 2007, giving them a formal treaty basis. They include a reference to the spirit of solidarity between Member States as well as a point on the promotion of the interconnection of energy networks.

¶20. (SBU) Issue: Competition

Outcome: As a result of French pressure, "free and undistorted" competition will not be listed in the new treaty among the objectives of the EU. However, the IGC mandate states that the single market ensures that competition is not distorted and that the EU will take action under existing treaty provisions to that effect. This will be confirmed in a treaty protocol (Note: a protocol has the same legal value and binding character as the treaty itself). In practice, the current EU rules will therefore continue to apply.

¶21. (U) Issue: Leaving the Club

Outcome: The Reform Treaty allows for a Member State to leave the EU. A country that wants to withdraw will negotiate new arrangements for working with the rest of the Union, but EU law would no longer apply to it.

IT'S A UNION, NOT A COMMUNITY  
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¶22. (U) The Reform Treaty will contain two clauses amending respectively the Treaty on the European Union (TEU - "Maastricht Treaty") and the Treaty establishing the European Community (TEC). The TEU will keep its name, but the TEC will be called the "Treaty on the Functioning of the Union," a reflection of the fact that the Union will acquire a single legal personality. The word "Community" will be replaced by the word "Union" throughout the text of the treaty. It will be stated that the two (amended) treaties constitute the treaties on which the Union is founded and that the Union replaces and succeeds the Community.

IT AIN'T OVER 'TIL IT'S OVER  
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¶23. (SBU) Comment: The great ambition of the failed "Constitutional" treaty was not in any of its individual parts, but rather its concept. It was billed as a Constitution for a reason - it was to represent a new, more political, more united Europe: a true union. Bereft of that concept, the Reform Treaty has become merely a set of unconnected, incremental expansions of EU authority - but one in which the whole is clearly less than the sum of the parts. Indeed, although the Reform Treaty's provisions are meaningful, the real objective is to wipe out the political strain of the failure to pass the Constitutional treaty. Thus, the imperative for a carefully orchestrated process with - uniquely in the EU's history - all of the key

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decisions locked down by the leaders before the IGC even began. It was not for nothing that Portuguese Foreign Minister Amado opened the IGC with the words "we shall not deviate one millimeter from that mandate" - the over-riding goal is a signed treaty, and a tightly controlled script is the surest means to that goal. The downside of this strategy, however, is that it invites public apathy. Indeed, this is not only the most unambitious treaty in EU history, but also the one that has generated the least excitement. This could be a particular problem for those countries who choose to ratify via a formal referendum. While Ireland is the only Member State legally bound to hold a referendum (the result of which is far from assured), other countries are facing renewed and increasing demands for a popular vote on the new treaty. It may be difficult to mobilize a positive voter turnout for a treaty without a clear, powerful concept. Instead, to sell the Reform Treaty to the European public, EU leaders will try to demonstrate how the reforms are aimed at enhancing the efficiency and democratic legitimacy of the enlarged EU as well as the coherence of its external actions. Whether this works remains to be seen. End Comment.

MURRAY

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